

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
CASE NO. 3:21-CR-047-KDB-DCK-1**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**DAVID KYLE REEVES,**

**Defendant.**

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**ORDER**

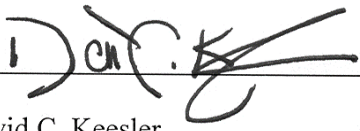
**THIS MATTER IS BEFORE THE COURT** *sua sponte* regarding a matter relevant to Defendant's competency hearing, scheduled for December 15, 2022 at 2:00 p.m. Importantly, Defendant's attorney, Mr. Kevin A. Tate, filed a "Sealed Motion To Declare Mr. Reeves Incompetent" (Document No. 38) on November 15, 2022. Mr. Tate attached to the motion as Exhibit A the "Report Of Psychological Forensic Evaluation" of Dr. James. H. Hilkey. See (Document No. 38-1). Additionally, a USB device was hand-delivered to the undersigned's chambers on November 16, 2022. A letter accompanied the USB device, indicating that the material on the device was to be considered "Exhibit B" and was filed under seal and *ex parte*. The Court has not reviewed the material contained on the USB device. Respectfully, considering the Court's mandate to render a fair decision that allows both sides the opportunity to object to evidence presented in support of the other side's position, the *ex parte* material will not be reviewed at this time. See RZS Holdings AVV v. PDVSA Petroleo S.A., 506 F.3d 350, 357 (4th Cir. 2007) ("ex parte communications by an adversary party to a decision-maker in an adjudicatory proceeding are prohibited as fundamentally at variance with our conceptions of due process") (quoting Thompson v. Greene, 427 F.3d 263, 269 n.7 (4th Cir. 2005)).

**IT IS, THEREFORE, ORDERED** that the Court will consider Defendant's "Sealed Motion To Declare Mr. Reeves Incompetent" (Document No. 38) at the Competency Hearing on December 15, 2022 at 2:00 p.m.

**IT IS FURTHER ORDERED** that the Court will not at this time consider the material on the USB device submitted by Mr. Tate; however, the Court will hear from the parties at the December 15 hearing asserting any contrary position on the issue.

**SO ORDERED.**

Signed: November 22, 2022

  
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David C. Keesler  
United States Magistrate Judge



SEALED DOCUMENT with access to All Parties/Defendants.